Supreme Court, U.S.
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No. 94-118

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

D-LANDCO, an Oklahoma Corporation,
and **BARBARA LASH,**

Petitioner,

vs.

STATE OF OKLAHOMA, ex rel.
DEPARTMENT OF TRANSPORTATION,

Respondent.

RESPONSE BRIEF OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1) Did Petitioner receive just compensation under Amendment V to the United States Constitution at the condemnation jury trial in 1992 related to the initial rezoning of its property under the City of Tulsa Zoning Code and Comprehensive Plan involving Corridor Districts and Corridor Zoning back in 1985?

2) Did Petitioner receive just compensation at the condemnation jury trial in 1992 on the issue of damages under Amendment V to the United States Constitution after Petitioner failed to pursue any of its available administrative and/or legal remedies on its only rezoning application filed seven (7) years previously in 1985?

3) Is the Petitioner barred by waiver, laches, and estoppel from raising its complaint related to substantive due process under the unique facts of this case?

4) Does the allegation of violation of the rule of sequestration after extensive *in camera* examination of a government "development trends" expert in which the Trial

Court ruled no violation of the Rule of Sequestration foist any justiciable issue upon this Court with regard to just compensation under Amendment V and the Fourteenth Amendment to the United States Constitution?

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DEPARTMENT OF TRANSPORTATION,
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RESPONSE BRIEF OF RESPONDENT TO PETITION FOR WRIT OF CERTIORARI

I. OPINIONS BELOW

This Court is in effect being asked to review the Jury Verdict and Judgment of the District Court of Tulsa County, State of Oklahoma, dated March 12, 1992. Although Petitioner technically seeks certiorari from the Order of the Supreme Court of Oklahoma dated April 19, 1994 denying

Petitioner's request for Writ of Certiorari from the Court of Appeals of the State of Oklahoma, the Oklahoma Supreme Court did nothing more than summarily affirm the Court of Appeals ruling which had affirmed the District Court's ruling. In its unpublished and non-precedential opinion, the Oklahoma Court of Appeals refuted Petitioner's constitutional claims:

> Landowner was not, however, denied due process; rather it failed to use the process available to it. By failing to appeal the zoning decision of the TMAPC, Landowner has long since waived any right to review the TMAPC's zoning decision. Therefore, this issue is not properly before this Court. *See* Patterson v. Stanolind Oil & Gas Co., 77 P.2d 83, 95 (Okla. 1938) (***due process issue not properly before court where no appeal taken from order complained of***) [Emphasis added.]

The record does not support the alleged abuse of discretion in allowing the testimony of Janice Gordon. The District Court's examination of Gordon supports its decision to allow her testimony. Accordingly, Respondent asks this Court to deny Petitioner's Writ of Certiorari.

II. OBJECTION TO JURISDICTION

Respondent objects to this Court assuming jurisdiction based upon Petitioner's untimely failure and delay in exhausting any of its administrative and/or legal remedies related to its initial zoning application in 1985, seven (7) years prior to the condemnation jury trial in 1992. Case law has

held that where a Petitioner had not pursued the remedy afforded by state law for the vindication of any constitutional right it claimed was violated, this Court must dismiss the appeal and deny certiorari pursuant to the holding of *Copperweld Steel Co. v. Industrial Com. of Ohio*, 324 U.S. 780, 89 L.Ed. 1363, 65 S.Ct. 1006 (1945).

STATEMENT OF THE CASE

The Facts

Petitioner's view of the facts can at best be described as a slanted view of the evidence presented at trial. Petitioner knows, or at least should know, that this Court will not grant certiorari to review the evidence or inferences drawn from it. *General Talking Pictures Corp. v. Western Elec. Corp.*, 304 U.S. 175, 178 (1938). As Justice Holmes wrote: "We do not grant a certiorari to review specific facts." *U.S. v. Johnson*, 268 U.S. 220, 227 (1925). Given this standard of review, an appropriate review of the facts is as follows:

A. The evidence demonstrated that Petitioner never preserved its right to appeal the zoning decision of the Tulsa Metropolitan Planning Commission (TMAPC) and the City of Tulsa in 1985.

Petitioner contends that it failed to receive just compensation. This is based on its duplicitous allegation that "state and local officials worked together to restrict its property's uses through zoning laws and thus depress its

value." However, Petitioner omits to fully inform this Court of the circumstances surrounding its 1985 Zoning Application for Corridor Zoning as well as the true nature of Corridor Zoning under the City of Tulsa Zoning Code.

Corridor Zoning is only allowed in Corridor Districts. Said Districts are from the edge of an existing and/or proposed expressway to the next major arterial street under the City of Tulsa Comprehensive Plan and Zoning Codes. [Transcript, Testimony of Wayne Alberty, p. 132.] A-13; [Transcript, Testimony of Robert Gardner, p. 479, p. 482, p. 490.] A-19--A-22. One hundred eleven (111) acres of the Petitioner's 139 acres was contained in what is known as the "Corridor District." The City of Tulsa granted Petitioner's Corridor Zoning request on this 111 acres. The remaining 28 acres was never in the "Corridor District" because it was on the expressway alignment and, hence, the City of Tulsa refused to rezone Petitioner's property to Corridor Zoning. Petitioner never appealed this denial of zoning to the District Court and, thus, never exhausted its available legal and/or administrative remedies in 1985. In addition, Petitioner never sought to obtain any other zoning on the remaining 28 acres zoned AG ("Agricultural Zoning") [Transcript, Testimony of Wayne Alberty, pp. 154-155.] A-14, and it was unrefuted at trial that this could have been done. [Transcript, Testimony of Robert Parmele, p. 198.] A-16. [Transcript, Testimony of Robert Gardner, pp. 490-493.] A-21--A-23. Indeed, the property immediately to the south of Petitioner's 28 acres zoned AG

was in the expressway alignment and was zoned for Residential Single Family ("RS-3"). A-38--A-39. It was also undisputed that had Petitioner asked for this RS-3, it would have been granted. [Transcript, Testimony of Robert F. Gardner, p. 493.] A-23.

B. The City of Tulsa did not attempt to depress market value of Petitioner's land through its zoning action.

Petitioner has accused the City of Tulsa and Oklahoma Department of Transportation ("ODOT") of trying to "freeze" its property based upon the speculations of two of its witnesses, Mr. Alberty and Mr. Parmele, through the zoning decision of the City of Tulsa in 1985. However, Petitioner as usual fails to disclose the whole story with regard to the testimony produced at trial. Mr. Parmele testified he was an expert in real estate appraisal and refuted Petitioner's "freeze theory" on Petitioner's direct examination of him:

> Q. So the value of the property would remain lower if the property remained in an AG Zoning classification.
>
> A. In their mind. ***Not in mine***, but in theirs. [Emphasis added.]
> [Transcript, p. 192] A-14.

This freeze theory dissolves upon a review of Robert Gardner's testimony. Mr. Gardner was the Deputy Director of the Indian Nations Council of Government which provides planning and zoning support to the five member zoning and

planning panel known as the TMAPC. He was the only witness tendered at trial as an expert in the Tulsa Zoning Code, the Comprehensive Plan of Tulsa, the Tulsa Development Guidelines and the Tulsa Zoning Code and Platting Regulations. He refuted Mr. Alberty's testimony as follows:

> Q. Sir, if Mr. Alberty made a statement that it's your intended object or the City's intended object to depress values of property through the zoning process in the path of the Mingo Valley Expressway, or any expressway, do you have an opinion as to the veracity of that statement, sir?
>
> A. That is an incorrect statement. [Trial Transcript, p. 493] A-22.

C. Petitioner's witnesses testified that the property's highest and best use and value was commercial, industrial, and multi-family and had a medium intensity use.

Petitioner complains that governmental actions that allegedly froze the value of its property, yet its witnesses were allowed to totally contradict this "freeze" theory in their testimony on direct examination. Indeed, Mr. Parmele who was Chairman of the TMAPC testified on direct examination:

> Q. All right. I've asked you to take a look at the D-Landco property from a highest and best use standpoint, have I not?

A. Yes, you have.

Q. Do you have an opinion, sir, as the chairman of the planning commission, as to the highest and best use of that property?

A. I have an opinion that the highest and best use will be some type of medium intensity uses.

* * *

Q. All right, sir. What about property adjacent to Tulsa Junior College and 81st Street?

A. Based on the presence of the junior college, I think it would lend itself to a medium intensity development.

Q. All right, sir. So you could put a restaurant there maybe, like the restaurant across the street?

A. That would be possible.

Q. And you might put an office warehouse on that property?

A. It would be possible.
[Transcript, pp. 192-193] A-15--A-16.

Medium intensity development includes restaurants and office warehouses under the City of Tulsa Comprehensive Plan, Development Guidelines and Zoning Code. Further, the area of land Mr. Parmele was testifying about was the 28 acres in the path of the expressway that was zoned AG.

Petitioner's value witnesses did not appraise the 28

acres as AG, but as commercial, industrial, and multi-family. Mr. Keele, Petitioner's appraiser, testified to this on direct examination as follows:

> Q. What sir, in your opinion, is the highest and best use of the D-Landco property?
>
> A. Commercial, industrial, and multi-family.
>
> Q. And what was it on June the 8th of -- 9th of 1990?
>
> A. Commercial, industrial, high density residential.
> [Transcript, p. 247] A-17.

Petitioner's other appraisal witness, Ms. Christine Lietzke, testified on direct examination that all of Petitioner's property had a commercial, not an agricultural. highest and best use as follows:

> Q. What's your opinion as the highest and best use of this piece of property?
>
> A. Commercial.
>
> Q. Would that be true with respect to the 28 acres in the take area?
>
> A. In my opinion before the take, it was all commercial.
> [Transcript, p. 366] A-18--A-19.

In light of its witnesses' testimony concerning a non-agricultural highest and best use, its attempts to foist this freeze theory of an agricultural price upon this Court is without merit.

D. Respondent's witnesses testified to a non-agricultural highest and best use.

The *coup de grace* in this whole specious argument of the freeze theory is that the Respondent's witnesses did not present AG as the highest and best use or value for the Petitioner's property. Ms. Janice K. Gordon was tendered as a market trends and highest and best use expert for development of real estate. She did an exhaustive analysis of property development in this area. She testified as follows:

> Q. Did you draw any conclusion as to a highest and best land use for the D-Landco property based on your survey of this study area?
>
> A. Yes, sir.
>
> Q. And what can you tell the ladies and gentlemen of the jury about that?
>
> A. What this particular thing [exhibit] tells me is that based on the history of land uses there, that the highest and best use for the D-Landco property would be single family residential.
> [Transcript, p. 553] A-24--A-25.

Respondent's value witness was an appraiser named Rusty Richardson. Mr. Richardson testified to a non-agricultural highest and best use and value after reviewing the market:

> Q. What conclusion did you draw from your study of the marketplace with regard to more intense zonings

developing single-family residential, Mr. Richardson?

A. Well, the only true market right now is for single-family. That is the highest and best use in most cases in this vicinity. . . .
[Transcript, p. 610] A-25.

IV. ARGUMENT AND AUTHORITIES

A. Summary of Argument

Simply put, Petitioner asks this Court to grant certiorari because it disagrees with the jury verdict at the District Court level that was affirmed by the Oklahoma Court of Appeals and the Oklahoma Supreme Court.

Petitioner argues that the Respondent and other governmental entities sought to "freeze" its property with an agricultural value in its only zoning request in 1985 (seven years before the trial). It fails to disclose to this Court it never appealed the City of Tulsa's zoning action in 1985, that the City's action was in accordance with duly enacted zoning laws, that Petitioner never sought to rezone its property again, and that it presented substantial amounts of evidence as to a commercial, industrial and multi-family highest and best use and value for its land at trial. The jury chose not to believe Petitioner's evidence.

Petitioner argues that the District Court, Oklahoma Court of Appeals, and the Oklahoma Supreme Court erred in holding there was no alleged abuse of discretion in allowing

the testimony of Respondent's highest and best use witness, Janice Gordon. Petitioner fails to disclose the lengthy *in camera* examination of Ms. Gordon in which the Trial Judge held there was no problem with Ms. Gordon testifying at trial.

PROPOSITION I.

PETITIONER RECEIVED JUST COMPENSATION AT THE CONDEMNATION JURY TRIAL IN 1992.

I. Petitioner's contention it was denied a fair trial due to an administrative zoning decision by the City of Tulsa seven years before trial is without merit.

A. Statute of limitations bars Petitioner's claim.

Petitioner contends it was denied a fair trial due to an administrative zoning decision by the City of Tulsa in 1985, seven years prior to the trial of this matter. It was unrefuted at trial that the Petitioner never contested the City's administrative decision. [Transcript, Testimony of Wayne Alberty, pp. 154-155.] A-14. [Testimony of Robert L. Parmele, Jr., p. 198.] A-16. [Testimony of Robert F. Gardner, p. 490.] A-20--A-21. Surely, the failure of the Petitioner to take any affirmative action on its part to timely contest the City's administrative action in 1985 constitutes a waiver on its part. As more than five years have elapsed since the City's zoning decision, clearly the Petitioner is precluded from asserting such a claim pursuant to the Statute of

Limitations codified in 12 O.S. 1992 §95(7) as follows:

> Civil actions other than for the recovery of real property can only be brought within the following periods after the cause of action shall have accrued and not afterwards; *** (Seventh); an action for relief not herein before provided for can only be brought within five (5) years after the cause of action shall have accrued.

B. The City's administrative zoning action in 1985 was consistent with the Comprehensive Plan and Development Guidelines.

A careful scrutiny of the basis for the City's action in 1985 demonstrates the Petitioner was not denied a fair trial. The City's zoning decision was a lawful exercise of its police powers. The City's denial of Corridor ("CO") zoning of the 28 acres in the path of the expressway was made in accordance with the provisions of the Comprehensive Plan and Development Guidelines of the City of Tulsa. [See Transcript, Testimony of Robert F. Gardner, p. 490.] A-20--A-21. Corridor zoning for the subject 28 acres was not proper since it fails to satisfy the essential requirement for eligibility per the Comprehensive Plan and Development Guidelines. Said requirement is the location outside the expressway alignment and not within the expressway alignment. The Metropolitan Development Guidelines for the City of Tulsa sets forth the Criteria for Corridor (CO) zoning in Corridor Districts at pp. 7, 9 and 10, as follows:

CORRIDORS
Corridors are located ***along*** freeways. . . . [Emphasis added.] A-6.

* * *

CORRIDORS - The criteria, permitted land use and development conditions of the Corridor [District] are as follows: * * *

CRITERIA:

> Land situated ***adjacent to*** existing, programmed (right-of-way acquired) or ***planned*** freeways. . . . No use is permitted as a matter of right in the Corridor Zoning District. [Emphasis added.] A-8.

* * *

DEVELOPMENT CONDITIONS:

> 1. ***Only land situated adjacent to a developed freeway or freeways where the right of way has been acquired (land acquisition program instituted which includes the subject property)*** and which is bounded by arterial streets will be considered for Corridor Zoning. [Emphasis added.] A-11.

The language is clear and unambiguous, providing that

only lands "adjacent to" and not in the path of an expressway are eligible for Corridor ("CO") zoning as these are the areas of the Corridor District. Robert F. Gardner, the Deputy Director of the Indian Nations Council of Governments ("INCOG"), was the only witness tendered at trial as an expert in the Tulsa Zoning Code, Comprehensive Plan, Development Guidelines and the Tulsa Zoning Code and Platting Regulations [Transcript, Testimony of Robert F. Gardner, p. 471.] A-19. He testified about the eligibility of D-Landco's property in the path of the expressway for CO zoning:

Q. Sir, have you reviewed the minutes associated with the zoning of the D-Landco property back in 1985?

A. Yes, I have.

Q. What did they ask for at that time, sir? If you recall.

A. They asked for corridor zoning. The property was zoned for agricultural as I recall.

Q. Okay. It was totally zoned agricultural and they were asking to change it?

A. Yes.

Q. Now, again, can you get corridor zoning under the comprehensive plan in the path of the Mingo Valley Expressway?

A. No, you cannot. It's not consistent with the plan.

Q. Could they have gotten some other type of zoning? Besides corridor zoning?

A. If they'd have asked for it. Anything that should have been appropriate under the yellow. We would grant a single-family had they asked for it.
[Transcript, p. 490.] A-21--A-22.

In the City of Tulsa, an applicant may only obtain CO zoning in a Corridor District. A Corridor District lies outside the Mingo Valley Expressway. The testimony of Robert F. Gardner corroborates this:

Q. Is the expressway right of way in a Corridor district?

A. No, it is not.
[Transcript, p. 482.] A-20.

The City's decision on Petitioner's land in 1985 was consistent with the treatment afforded all other properties similarly situated in the path of the extension of the Mingo Valley Expressway. A partial copy of the zoning map clearly shows there was RS-3 and AG zoning primarily in the path of the Mingo Valley Expressway. A-38--A-39.

C. The City did not attempt to depress market value of Petitioner's land through its zoning action.

Petitioner has accused the City of trying to "freeze" its property based on the alleged speculations of its witnesses Alberty and Parmele. However, Petitioner's "freeze" argument melts upon a close scrutiny of the testimony from the trial transcript. For instance, Mr. Parmele on direct

examination by the Petitioner admits he is an expert in real estate appraisal and that he does not believe the AG zoning depressed the value of Petitioner's land. [Transcript, Testimony of Robert L. Parmele, p. 192, ll. 5-10.] A-14--A-16.

In addition, Mr. Gardner flatly denied it was his or the City's intended object to depress the value of properties located in the path of the Mingo Valley Expressway through the zoning process. [Transcript, Testimony of Robert F. Gardner, p. 493, ll. 2-23.] A-22.

In *April v. City of Broken Arrow*, 775 P.2d 1347 (Okla. 1989), the Oklahoma Supreme Court held at page 1355 that as far as the United States Constitution is concerned, only the most extreme and onerous regulations can constitute a regulatory taking [which Petitioner has indirectly alleged]. The Oklahoma Supreme Court notes *in dicta* at p. 1355:

> ***City's mere refusal to rezone owner's property*** cannot be considered as either an actual taking or a de facto taking. [Emphasis added.]

There was sufficient evidence presented at trial to establish that the City's action in 1985 in not rezoning the 28 acres from AG to CO was a legitimate exercise of its police powers and not a taking.

Petitioner cites 9 A.L.R. 3rd 291, 304, and 305 for the proposition that courts have vigorously condemned as confiscatory the actions of a public body in denying rezoning merely for the purpose of decreasing land values in order to

lower acquisition costs in eminent domain proceedings. Petitioner fails to point out to the Court that 9 A.L.R. 3rd 291 on *Eminent Domain--Damages Zoning* contains a footnote numbered 20 at the bottom of p. 305 which reads as follows:

> 20. This should not be taken to mean that the condemning authority may not have the property evaluated in light of zoning restrictions which it enacted so long as the restrictions were ***enacted in good faith and not for the purpose of controlling the cost of condemnation.*** [Emphasis added.]

Petitioner also cites *Kissinger v. City of Los Angeles*, 327 P.2d 10 (Cal. 1958), for the proposition that governmental zoning action used to down zone property to depress values is invalid. However, it fails to set forth the Court's holding at page 14 that "***if there is any reasonable justification of the action of the council in passing the ordinance the court may not substitute its judgment for that of the trial court.***" [Emphasis added.]

Surely, the testimony of Mr. Gardner concerning the lawful purposes of CO zoning coupled with the Comprehensive Plan and Development Guideline criteria for CO zoning satisfies this rule with regard to the City's administrative zoning action in 1985. This is especially so given the clearly distinguishable facts in this case from those in *Kissinger, supra*. In *Kissinger*, the City Planning Commission violated Plaintiff's procedural due process rights by passing an ordinance that down zoned *only* the property of the Plaintiff

from commercial to residential in the airport flight path of property to be acquired for the City's own use. This was done without public hearing, in violation of the City of Los Angeles' own rules, treating the Plaintiff's property differently than other similarly situated properties in the area. Further, there was strong evidence in the motion and discussions of the council members who voted that the main purpose was to acquire the property at a lesser price for use by the airport. No such facts exist in the case before this Court showing a down zoning of Petitioner's property, disparate treatment of Petitioner when compared to other properties, and no violation of due process. Hence, nothing warrants the overturning of the City of Tulsa's zoning decision in 1985, based upon the previously cited trial transcript.

D. Petitioner presented evidence of commercial, industrial, and multi-family apartment uses and values.

Finally, as stated in Paragraph C of The Facts contained herein, the Petitioner put on substantial evidence of a highest and best use that was commercial, industrial and multi-family with appraisal values reflecting the same. How can it then complain of government action designed to depress values when its own evidence contradicts such an assertion? Moreover, the Respondent's evidence was also for non-agricultural uses and values as cited in Paragraph D of The Facts.

The jury awarded an amount of damages that was neither Petitioner's value conclusion nor the Respondent's value conclusion. Indeed, there was a Majority Report of Commissioners setting forth an estimate of just compensation at $1,200,000, and a Minority Report of Commissioners setting forth an estimate of just compensation at $605,620. A-32--A-37. The Respondent paid the $1,200,000 into Court and both parties filed a demand for jury trial. The Petitioner sought $3,000,000 in damages and the Respondent presented $534,200 in damages. The jury verdict of $708,200 was in between those two values. However, as noted in the case of *Lloyd v. State*, 428 P.2d 262 (Okla. 1967):

> . . . The fact that there is much disparity as to the amount of damages between the witnesses for the Plaintiff and Defendants, and the trial court chooses to accept the lowest amount of estimated damages, is not in error in and of itself. . . .

PROPOSITION II.

THE TRIAL COURT PROPERLY ALLOWED ODOT'S WITNESS JANICE K. GORDON TO TESTIFY IN ACCORDANCE WITH THE DISCRETION OF THE COURT.

The Petitioner has alleged that the Trial Court erred in exercising its discretion in allowing Respondent's expert

witness, Mrs. Janice Gordon, to testify.

Janice K. Gordon was certified by the trial court as an expert witness for the Plaintiff:

> MR GRAY: Your Honor, at this time we'd like to tender Mrs. Gordon as an expert in market trends with regard to land uses in southeast Tulsa.
>
> THE COURT: Very well.
>
> [Transcript, p. 544, ll. 19-22.] A-24.

The transcript shows there was no objection by Petitioner to her certification as an expert witness. [Transcript, p. 544, ll. 22-25; p. 545, ll. 1-2.] A-24.

Common law allowed a trial court to exercise its discretion in allowing expert witnesses to remain in the courtroom and the Oklahoma Supreme Court previously considered the effect of the enactment of 12 O.S. 1991 §2615 upon the common law rule of sequestration in *Clark v. Continental Tank Co.*, 744 P.2d 949 (Okla. 1987). At page 952 the Oklahoma Supreme Court stated that allowing an expert witness in the courtroom was in the trial court's discretion: "...It is clear that under the common law in Oklahoma such would have been allowed, absent abuse of the trial court's discretion." After a discussion of the legislative history, the Oklahoma Supreme Court concluded at page 953 the common law rule was still in effect: "We cannot conclude that the legislature, either intentionally or unintentionally,

altered that rule of procedure by adoption of the Evidence Code."

Appellant's citation of the statutory language contained in 12 O.S. 1991 §2615 is in error. Subsequent to the *Clark* decision, the legislature modified the statute to include the expert witness exception to the Rule of Sequestration by enacting Laws 1991, Chapter 62, Section 5, effective September 1, 1991. The revision in said Statute reads as follows:

> 3. A person whose presence is shown by a party to be essential to the presentation of the party's cause; . . . .

This statute was in effect at the time of trial.

After a lengthy *in camera* examination of Ms. Gordon by Petitioner, the Court at page 532 asked her:

> THE COURT: Ms. Gordon, let me ask you this. Is there anything at all about what you have heard, either from your husband or anyone else in the last three days since the trial started, that is going to change, color, or in any way affect your testimony that you're going to give?
>
> MRS. GORDON: No, sir.
>
> THE COURT: Well, I don't find

> anything that's violative of the rule. It is a discretionary thing so I think I should overrule your request, Mr. Levy. [Transcript, p. 532.] A-23--A-24.

The Trial Court acted well within its discretionary authority in allowing Janice Gordon to testify at trial, given Title 12 O.S. 1991, §2615, and the careful scrutiny of Mrs. Gordon by Petitioner's counsel and the trial judge. Moreover, Ms. Gordon was never in the courtroom during these proceedings except when she was called as a witness. The judgment of the Trial Court should be affirmed.

CONCLUSION

In summary, the Petitioner's Propositions I and II should be dismissed for the following reasons:

1. There is a statute of limitations barring Appellant from raising this claim in this appeal. [Accord, Title 12 O.S. 1992 §95(7)];
2. The weight of the evidence demonstrated that the City lawfully exercised its police powers in the rezoning request of the Appellant in 1985;
3. The only evidence of a highest and best use and value for Petitioner's property at trial was residential, office, industrial and commercial, not agricultural.

4. The Trial Court did not abuse its discretion in overruling Petitioner's *in camera* motion to disqualify Ms. Gordon.

Respectfully submitted,

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A -1

METROPOLITAN DEVELOPMENT GUIDELINES
and
ZONING MATRIX

Parts of the Comprehensive Plan
for the
Tulsa Metropolitan Area

As adopted by Resolution No. 1658:630
Tulsa Metropolitan Area Planning Commission
(TMAPC)

TMAPC Approval: August 5, 1987
City Commission Approval: August 21, 1987
County Commission Approval: September 14, 1987

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INTRODUCTION

The Metropolitan Development Guidelines consist of four elements; Development District Goal and Objectives, Functional Area Goals and Objectives, Development District Concept, and Development District Implementation Policy. The Development Guidelines, as policy statements, are intended to provide increased efficiency and consistency in the decision making process. They are directed toward the issues of the quality of development and the living environment, and are essentially neutral in regard to the Balanced Metropolitan Growth Policy. They should not be interpreted as a land use plan or as a zoning code, but rather as a framework or guide within which sound planning, zoning, subdivision, investment and building decisions can be made by individuals and public officials and agencies. It is intended that, in the application of the Development Guidelines, an evaluation of existing conditions, including land uses, existing zoning and site characteristics, shall be considered.

The Development District Goal and Objectives, and the Functional Area Goals and objectives define the desired character and quality of development to be achieved. In this context, goals are long-range aims, while objectives are shorter range steps toward the fulfillment of goals. The Development District Concept provides the conceptual basis for development policies, while the Development District Implementation Policy sets forth the actions necessary to achieve the adopted policies.

DEVELOPMENT DISTRICT GOAL AND OBJECTIVES

GENERAL GOAL

Provide a quality living environment (housing, working, shopping and leisure) for all residents in a diversified community, so that every citizen has available a choice of a variety of lifestyles, and in a manner which will maintain or improve the quality of the natural and manmade environment.

GENERAL OBJECTIVE

Guide the metropolitan area's physical growth so that it may become an even more pleasant, desirable and attractive place in which to live, work and play in an area offering stabilized development, good living and working conditions, and a sound economic base and tax structure; and to assure maximum benefit to the people from public expenditures and private investment, through economical employment of resources, prevention of duplication and waste, and enhancement of property value.

DEVELOPMENT OBJECTIVES

1. Develop a flexible framework for decision making responsive to change, in order to maintain long-term viability and continuity in metropolitan development policy.

2. Differentiate and classify components of the metropolitan area so that a more rational

approach to land use planning can be effectuated.

3. Locate various intensities of development in accordance with manmade and natural systems.

4. Recognize existing high intensity areas established within the metropolitan area, and place additional uses of this type in optimum locations.

5. Develop areas only to the intensity that will not overload or overcrowd the planned public services and facilities.

6. Develop areas considering slope, soil, rock, vegetation and natural drainage characteristics.

7. Encourage quality development by the use of more responsive development tools, e.g. Planned Unit Development (PUD), site plan review, etc.

8. Initiate a major effort to make zoning a positive force in metropolitan development, rather than a negative one.

9. Develop reasonable planning standards for site design.

* * *

DEVELOPMENT DISTRICT CONCEPT

* * *

CORRIDORS

Corridors are located along freeways and are to contain major employment and region-serving functions in concert with a relatively high density residential base. No use, however, is permited as a matter of right in the Corridor Zoning District. The type and intensity of use is subject to the Corridor Site Plan review and approval process as specified in the Zoning Code. The basic characteristics of this component are:

1. Uses that are more intense in nature should have high exposure and convenient access to high capacity, metropolitan transportation facilities.

2. This multi-functional grouping of land uses should be interrelated by internal vehicular and pedestrian traffic systems, and the entire corridor should be ultimately connected to a metropolitan wide transit system.

3. Corridors should have appropriate access to primary and secondary arterial streets.

4. Corridors should have a maximum depth from the adjacent freeway.

5. Within corridors, the higher intensity development should be designed by utilization of setbacks, transitional uses, and other separations to be compatible with low intensity development.

* * *

* * *

DEVELOPMENT DISTRICT IMPLEMENTATION POLICY

* * *

CORRIDORS

The criteria, permitted land use and development conditions of the Corridor are as follows:

CRITERIA:

Land situated adjacent to existing, programmed (right-of-way acquired) or planned freeways is generally considered to be within either a Subdistrict or a Node, as are other areas of the Development District. No use is permitted as a matter of right in the Corridor Zoning District. The type of use and corresponding intensity of use is subject to the Corridor Site plan review and approval process as specified in the Zoning Code. Land may be deemed appropriate for high intensity development if the freeway is built or the right-of-way acquired (land acquisition program instituted which includes the subject property), unless in the particular instance the configuration of the corridor or existing development has

significantly impaired the accessibility of the corridor or rendered the achievement of sound land use relationships impractical. Thus, in order for high intensity uses to occur, a zoning application must first be made and granted placing a parcel in the Corridor Zoning District. Once a parcel has been designated as being in this zoning classification, high intensity development would only be allowed in compliance with an approved site plan. Additional criteria which apply are:

1. The arterial streets (parkway, primary and secondary) that bound land adjacent to expressways and intersect or interchange with expressways are designated as Freeway Access Arterial Streets (see Figure 2, page 11). The arterial streets (parkway, primary and secondary) that bound land adjacent to expressways and that do not intersect or interchange with an expressway are designated as Corridor Access Arterial Streets (see Figure 2, page 11).

2. In order that the capacity of the arterial street and expressway system may be maintained, access for a corridor development shall be principally from corridor collector streets.

3. No full movement access to the Corridor will be allowed along the

freeway access arterial street within 600 feet of the arterial intersection, or within 600 feet of the centerline of the freeway ramp.

4. There should be a maximum of three collector intersections, with full movement access, allowed along any segment of the corridor access arterial street. A spacing standard of 1,000 feet between collector streets connecting with a corridor access arterial street should be used unless topography would prohibit meeting this standard.

5. The Corridor internal collector street system, as shown in Figure 2 (page 11), should provide access to all tracts. This system should intersect as near as possible to the midpoint of the freeway access arterial street where access restrictions permit.

LAND USE:

1. Permits consideration of residential and non-residential uses, EXCEPT the following: Use Unit 3 - Agriculture, Use Unit 24 - Mining and Mineral Processing, Use Unit 25 - Light Manufacturing and Industry, Use Unit 26 - Moderate Manufacturing and Industry, and Use Unit 27 - Heavy Manufacturing and Industry.

2. The permitted intensity within the Corridor

Zoning District shall be that permitted by the approved Corridor Site Plan, but not the exceed the maximum intensity as specified in the Zoning Code.

DEVELOPMENT CONDITIONS:

1. Only land situated adjacent to a developed freeway or freeways where the right-of-way has been acquired (land acquisition program instituted which includes the subject property), and which is bounded by arterial streets will be considered for Corridor zoning.

2. Within areas previously zoned as Corridors, but within which the expressway right-of-way has not been acquired, the intensity of a proposed development may be limited to low or medium intensity, based on the anticipated scheduling of right-of-way acquisition and evaluation of existing land use and site conditions.

3. The Corridor shall have a maximum land area of 3,000 square feet for every foot of expressway frontage.

IN THE DISTRICT COURT FOR TULSA COUNTY, STATE OF OKLAHOMA.

Case No. CJ-90-958

DISTRICT COURT
FILED
OCT 01 1992
DON E. AUSTIN, COURT CLERK
STATE OF OKLA. TULSA, COUNTY

THE STATE OF OKLAHOMA, ex rel.
Department of Transportation,

Plaintiff,

vs.

D-LANDCO, an Oklahoma corporation,
and **BARBARA LASH,**

Defendants.

RECORD OF PROCEEDINGS had in the above-entitled cause on March 9, 10, 11, and 12, 1992, before the Honorable Ronald L. Shaffer, Judge of the District Court of Tulsa County, State of Oklahoma, and a jury of twelve.

APPEARANCES:

MR. STEPHEN P. GRAY
2865 East Skelly Drive, Suite 205
Tulsa, Oklahoma
Attorney for the Plaintiff

MR. LOUIS LEVY
5314 South Yale, Suite 310
Tulsa, Oklahoma
Attorney for the Defendants

REPORTED BY:

Kathie Schiermeister, CSR, CP-RPR, CM
Official District Reporter

VOLUME I of III
(pp. 2-227)

DISTRICT COURT OF OKLAHOMA
Official Transcript - Copy

TESTIMONY OF MR. WAYNE ALBERTY:

Page 132, Lines 5 - 24

Q. So wouldn't it be reasonable to say that corridor zoning is somewhat of a project influence resulting from the Mingo Valley Expressway?

A. Yes, that's by -- that's the sole purpose and definition of a corridor district, to be adjacent to high traffic expressways.

Q. Mr. Alberty, I'm going to hand you what has been marked as Defendant's Exhibit No. 40. If you would take a look at East 81st Street. Could you go one mile east on 81st Street between Garnett and 129th East Avenue, if you would. What type of zoning do you have on the north side of 81st Street there?

A. The north side is R-1 zoning.

Q. Now, R-1, that's residential zoning for purposes of the City of Broken Arrow, is it not?

A. Yes, that's correct. That's their low density zoning.

Q. And what's on the south side of 81st Street --

A. R-2.

Q. And, again, is that a residential single-family?

A. Yes, it's a single-family medium density.

Page 154, Line 22 through Page 155, Line 3

Q. Well, do you know if the property owner ever came back in after 1985, based on your review of the INCOG records, and ever requested the AG-zoned areas of 1A and 2A to be zoned to RS-3 or some other zoning use?

A. After 1985?

Q. Yes, sir.

A. Not to my knowledge.

TESTIMONY OF ROBERT L. PARMELE, JR.:

Page 192, Line 5 through Page 193, Line 23

Q. So the value of the property would remain lower if the property remained in an AG classification?

A. In their mind. Not in mine, but in theirs.

Q. Yes. Well, you're an appraiser and a real estate broker, are you not?

A. Yes.

Q. And there are no real estate brokers or appraisers on the staff of the planning commission, are there?

A. No, sir.

Q. All right, They're just doing it from a zoning standpoint.

A. Yes, that's correct.

Q. And wouldn't you agree with me that, generally speaking, agricultural zoning -- land that is agriculturally zoned will sell for less money than land that is zoned commercially.

A. Generally speaking, that would be true.

Q. All right. I've asked you to take a look at the D-Landco property from a highest and best use standpoint, have I not?

A. Yes, you have.

Q. Do you have an opinion, sir, as the chairman of the planning commission, as to the highest and best use of that property?

A. I have an opinion that the highest and best use will be some type of medium intensity uses.

Q. All right, sir.

A. Based on the physical facts of the surrounding uses of the other properties.

Q. Would any portion of the D-Landco property be commercial as a highest and best use?

A. Yes.

Q. Which portion?

A. The comprehensive plan, I believe the development guidelines would call for the corner ten acres of the property to be a commercial use.

Q. All right, sir. What about any of the property adjacent to Tulsa Junior College and 81st Street?

A. Based on the presence of the junior college, I think it would lend itself to a medium intensity development.

Q. All right, sir. So you could put a restaurant there maybe, like the restaurant across the street?

A. That would be possible.

Q. And you might put an office warehouse on that property?

A. It would be possible.

Page 198, Lines 16 - 22

Q. If D-Landco Corporation, after 1985, had applied to rezone the property to RS-3, some sort of more intense use than agricultural, of -- such as RS-3 particularly, could they have gotten it, in your opinion?

A. In my opinion, if they would have applied for rezoning on that particular tract that was reserved for RS-3 or higher intensity, it would be possible to get that, yes.

TESTIMONY OF MR. DALE KEELE:

Page 247, Lines 3 - 25

Q. So growth is continuing in this area; is that right?

A. Oh, yes, sir.

Q. All right, sir. Let me ask you, sir, if you arrived at an estimate of highest and best use for the D-Landco tract.

A. Yes, sir, I have.

Q. And define the term as you know it in the -- from a real estate appraisal standpoint.

A. The highest and best use is what would be feasible, legal, appropriately supported, physically feasible, and reasonably feasible.

Q. What, sir, in your opinion, is the highest and best use of the D-Landco property?

A. Commercial, industrial, and multifamily.

Q. And what was it on June the 8th of -- 9th of 1990?

A. Commercial, industrial, high density residential.

Q. What factors lend themselves to that sort of a conclusion and that sort of use?

A. You can see the neighborhood, how it's zoned and how the uses are being -- the land is being put to in the neighborhood. And this will give you an idea of what the use for this property would be. Being next to the junior college here would indicate that any type of commercial use would be greatly enhanced -- both of them would be enhanced by it.

TESTIMONY OF MS. CHRISTINE LIETZKE:

Page 366, Lines 1 - 24

Q. Please take the witness stand.
Define highest and best use for the jury as you understand that term.

A. Highest and best use?

Q. Yes.

A. Basically it's the use that will return to the owner the most money. In some very simple terms.

Q. What's your opinion as to the highest and best use of this piece of property?

A. Commercial.

Q. Would that be true with respect to the 28 acres in the take area?

A. In my opinion, before the take, it was all commercial.

Q. Okay. Do you know of any reason to suspect that that property might ever be developed residential in single-family homes? As a highest and best use?

A. Not in my opinion.

Q. What are the limiting factors to residential in your opinion? On this tract of land.

A. Well, I don't think a residential development is a successful when it backs up to a highway. I think the noise factor would be one. I have a

real hard problem seeing this as anything but commercial because of TJC, Golf World, and everything around it.

TESTIMONY OF ROBERT F. GARDNER:

Page 471, Lines 12 - 18

MR GRAY: Your Honor, at this time we would tender Mr. Gardner as an expert in the Tulsa Zoning Code with regard to comprehensive plan, the development guidelines, and the Tulsa Zoning Code and platting requirements.

THE COURT: Very well.

MR. LEVY: No objection, Your Honor.

THE COURT: He'll be so admitted.

Page 478, Line 21 through Page 479, Line 8

Q. Mr. Gardner, could you explain what you mean by "potential corridor."

A. Okay. The corridor is a unique process. In fact, it was developed as a part of the development guidelines, so the zoning code and the new code that we have, which was adopted in 1970, did not even have corridor zoning in it. In '75 when the zoning code was amended and recodified, we came out with the corridor zoning classification. And as I stated, by definition, it's dependent upon an expressway

being there to serve the area. If the expressway is there to serve the area, then we will consider the potential for higher intensity type uses. And here again, that depends upon also the surrounding land use in a given area.

Page 482, Lines 3 - 17

Q. Is the expressway right of way in a corridor district?

A. No, it is not. The expressway is the basis for having potential corridor zoning. Without the expressway -- I mean, the plan for the expressway, you can't have corridor zoning.

Q. Well, are you telling me that corridor zoning is project influence then, based on an expressway?

A. It's based on the expressway. And that's the only basis that it can be considered and approved.

Q. Well, let me ask you this. Without a planned expressway on the major street and highway plan, then you're not in a corridor district; correct?

A. That's correct.

Q. And then you couldn't get corridor zoning. Is that correct?

A. That's correct.

TESTIMONY OF MR. ROBERT F. GARDNER: (con't.)

Page 490

Q. Sir, have you reviewed the minutes associated with the zoning of the D-Landco property back in 1985?

A. Yes, I have.

Q. What did they ask for at that time, sir? If you recall.

A. They asked for corridor zoning. The property was zoned agricultural as I recall.

Q. Okay. It was totally zoned agricultural and they were asking to change it?

A. Yes.

Q. Now, again, can you get corridor zoning under the comprehensive plan in the path of the Mingo Valley Expressway?

A. No, you cannot. It's not consistent with the plan.

Q. Could they have gotten some other type of zoning? Besides corridor zoning?

A. If they'd have asked for it. Anything that would have been appropriate under the yellow. We would grant a single-family had they asked for it.

Q. Have you heard of something known as RS-3 zoning, sir?

A. Yes.

Q. Back in 1985, was RS -- excuse me, what is RS-3 zoning, Mr. Gardner?

A. It stands for residential single-family. The 3 means that it's a 60-foot-wide lot. 6,900 square foot minimum block.

Page 493, Lines 2 - 24

Q. Sir, if Mr. Alberty made a statement that it's your intended object or the City's intended object to depress values of property through the zoning process in the path of the Mingo Valley Expressway, or any expressway, do you have an opinion as to the veracity of that statement, sir?

A. That is an incorrect statement. The value of the property in the path of the expressway is whatever the land is worth, based upon the type of zoning they can receive without that expressway, and under the development guidelines, what they might be expected to receive. They could have received RS-3 under the development guidelines without the expressway. No one asked for it. So they weren't given RS-3.

Q. Sir, there's also been statements -- well, do you know a man by the name of Mr. Bob Parmele?

A. Yes, sir.

Q. Does Mr. Parmele speak for you, sir?

A. No, he does not.

Q. Does he speak for the staff of the Indian Nations Council of Governments?

A. No, he does not.

Q. Does he speak for the City of Tulsa?

A. No, he does not.

TESTIMONY OF MRS. JANICE K. GORDON:

Page 532, Lines 15 - 24

[BY MR. LEVY] I would at this time move to have this witness's testimony excluded on the basis of Title 12, Section 2615, the so-called rule of sequestration. The rule has been violated in that this witness has discussed critical testimony related to that testimony that she's been employed to present to the jury with her husband. For the past three days. And we think that's a violation of the rule and we think it would be highly prejudicial to our case for this witness to know what other witnesses have testified to, particularly in view of the fact that it was ODOT's attorney in this case who invoked the rule of sequestration. We have to live by it; we think that they should likewise have to honor the rule of sequestration.

THE COURT: Ms. Gordon, let me ask you this. Is there anything at all about what you have heard, either from your husband or anyone else in the last three days since the trial started, that is going to change, color, or in any way affect your testimony that you're going to give?

JAN GORDON: No, sir.

THE COURT: Well, I don't find anything that's violative of the rule. It is a discretionary thing so I think I should overrule your request, Mr. Levy.

MR. LEVY: Thank you, Your Honor.

Page 544, Line 19 through Page 545, Line 2

MR. GRAY: Your Honor, at this time we'd like to tender Mrs. Gordon as an expert in market trends with regard to land uses in southeast Tulsa.

THE COURT: Very well.

MR. LEVY: May I inquire, Your Honor?

THE COURT: Well, let's save it for cross, Mr. Levy.

MR. LEVY: All right.

THE COURT: Go ahead.

Page 553, Lines 5 - 25.

Q. Did you draw any conclusion as to a highest and best land use for the D-Landco property based on your survey of this study area?

A. Yes, sir.

Q. And what can you tell the ladies and gentlemen of the jury about that?

A. What this particular thing tells me is that based on the history of land uses there, that the

highest and best use of the D-Landco property would be single-family residential.

Q. Would there ever been any potential for commercial anywhere on the D-Landco property? In your opinion?

A. Yes, sir.

Q. And where would that be located?

A. The corner of 81st and Garnett would probably be suitable at some point in time, but it needs to be built up a little more before some -- like a convenience store requires 3,000 rooftops in a square mile radius, that would be their normal criteria to -- a radius isn't square, sorry. But in a one-mile radius in order to say that that would be a spot that they would use.

Q. Go ahead and have a seat, Mrs. Gordon.

TESTIMONY OF MR. RUSTY RICHARDSON:

Page 610, Lines 18 - 23

Q. What conclusion did you draw from your study of the marketplace with regard to more intense zonings developing single-family residential, Mr. Richardson?

A. Well, the only true market right now is for single-family. That is the highest and best use in most cases in this vicinity. . . .

CERTIFICATE

STATE OF OKLAHOMA)
) ss.:
COUNTY OF TULSA)

I, KATHIE SCHIERMEISTER, a Certified Shorthand Reporter in and for the State of Oklahoma, do hereby certify that the foregoing is a true and correct record of my notes taken in Case No. CJ-90-958, heard on the 9th, 10th, 11th, and 12th days of March 1992.

I further certify that I am not related to nor attorney for either of said parties nor otherwise interested in said action.

WITNESS MY HAND AND SEAL this 14th day of September, 1992.

s/Kathie Schiermeister
Kathie Schiermeister, CSR, CP-RPR, CM
Official District Reporter

Kathie Schiermeister
Oklahoma Certified Shorthand Reporter
Certificate No. 00351

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

STATE OF OKLAHOMA, EX REL., DEPARTMENT OF TRANSPORTATION,	)
Appellant,	)
vs.	) **NO. 79427**
D-LANDCO, INC., an Oklahoma corporation; BARBARA LASH; and THE TULSA COUNTY TREASURER	) **Case No. CJ-90-0958**
Appellee.	)

RESPONSE TO PETITION IN ERROR AND PRELIMINARY STATEMENT

A. OBJECTION TO APPEAL?

Should this appeal be dismissed at this time?

_____ Yes __X__ No

If your answer is yes, state the reasons briefly: _____

Exhibit "A" attached (not to exceed one 8-1/2" X 11" double spaced page).

B. IF OTHER THAN ENTIRE TRANSCRIPT IS DESIGNATED BY APPELLANT, ESTIMATE NUMBER OF ADDITIONAL PAGES NEEDED.

_____

C. IS APPELLEE WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PRE-DECISIONAL CONFERENCE UNDER 3.7 IF OFFERED THE OPPORTUNITY?

___X___ Yes _____ No

D. WOULD APPELLEE BE WILLING TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER SUPREME COURT RULE? (Fast track) (See F(1), Petition in Error).

___X___ Yes _____ No

E. APPELLEE'S BRIEF STATEMENT AS TO PROCEEDING.

Exhibit "B" attached (not to exceed 8 1/2" double spaced page).

If not agreeable, why not? _____

DATE: _____, 19____

Verified by:

PICKARD, MILLER & GRAY
Co-counsel for the Plaintiff
Oklahoma Department of
Transportation

By:_____
Stephen P. Gray, OBA #3556
4870 South Lewis, Suite 200
Tulsa, Oklahoma 74105
(918) 747-9797

CATHY S. HOOD
Counsel for the Plaintiff,
Oklahoma Department of
Transportation
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105

G. AFFIDAVIT OF MAILING TO APPELLANT AND DISTRICT COURT CLERK (TRIBUNAL) ON DATE FILED IN SUPREME COURT

I hereby certify that a true and correct copy of the above and foregoing Response was mailed this _____ day of _____, 1992, by depositing it in the U.S. Mails, postage prepaid to:

Louis Levy
5314 S. Yale, Suite 310
Tulsa, Oklahoma 74135-6246

I further certify that a copy of the above and foregoing Response was filed in the Office of the Court Clerk of Tulsa County on the _____ day of _____, 1992.

_____
Stephen P. Gray

EXHIBIT "B"

On February 23, 1990 the Appellee (State of Oklahoma ex rel. Department of Transportation) filed a Petition to condemn 28.09 acres of land for the extension of the Mingo Valley Expressway. A Commissioner's Award of $1,200,000.00 was assessed and both parties demanded a jury trial. Depositions were taken of the plaintiff and the defendant's witnesses. The defendant's witnesses testified to two different highest and best use scenarios with regard to the fair market value of the property prior to trial. Indeed, even William Del Armstrong, president of D-Landco, at Page 19, Line 18-20 of his deposition dated March 29, 1991 testified his opinion of highest and best use was agricultural and then changed his testimony to commercial at the time of trial. A trial occurred March 9-12, 1992. The defendant presented the testimony of seven witnesses and the plaintiff presented the testimony of four witnesses. Nine members of a Tulsa County jury returned a verdict of $708,220.00 in favor of the Appellant. Whereupon Appellant appealed said jury verdict.

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

State of Oklahoma, ex rel. Department of Transportation,	)	
Plaintiff,	)	
vs.	)	**Case No. CJ-90-958**
D-Landco Inc., an Oklahoma corporation; Barbara Lash; and the Tulsa County Treasurer,	)	
Defendants.	)	

MINORITY REPORT OF COMMISSIONERS

COME NOW the undersigned Commissioners appointed by the Judge of this Court to inspect the real property hereinafter described and to consider the injury or damages which the said defendants as above named as the owners thereof have sustained and may sustain by reason of the taking of said property. Said taking is in fee simple, unless specified otherwise in the legal descriptions(s) attached hereto in which case the quality of title or interest to be acquired herein shall be as stated in such legal description(s), including airspace but excluding mineral interests and

including the right to use and remove any and all road-building materials. The appropriation is for public purposes by the Department of Transportation of the State of Oklahoma. We, the undersigned, respectfully submit the following Report, to-wit:

The undersigned Commissioners were and are disinterested free holders of Tulsa County, Oklahoma. We are not interested in any like question. On the 23 day of April , 1990, said Commissioners took the oath prescribed on Exhibit "A", attached hereto and made a part hereof.

We further report that it is necessary for the Plaintiff, Department of Transportation, to acquire said property. It is necessary to include airspace but exclude mineral interests. It is also necessary to include the right to use and remove any and all road-building materials. Said necessity is for public purposes of a State Transportation System and facilities necessary and incidental thereto. Title to said described property must be taken by said Plaintiff for said purposes.

We further report that we have considered the injury which the defendants, as the owners of the property described, have sustained and may sustain by reason of the taking of said property by the Department of Transportation of the State of Oklahoma. We have considered the value of the land or rights or interest therein taken excluding any mineral interest other than as is set forth in the Petition. We have further considered the amount of injury and damages done to the remainder of the real estate, either directly or indirectly, by reason of said

taking. We do hereby assess the compensation and damages from all causes due said owners by reason of such taking of the described premises and in accordance with the Instructions to Commissioners, we find:

Before Value of entire property	$2,569,780
LESS the	
After Value of remaining property	$1,964,160
ESTIMATE OF JUST COMPENSATION	$ 605,620

IN WITNESS WHEREOF, we have hereunto set our hands on this 25 day of May, 1990.

COMMISSIONERS:

s/John Story

_____

_____

10917(02)
Parcel 168 & 168.1
??-31-90

A strip, tract or parcel of land lying in and being a part of the NE¼, Section 18, T 18 N, R 14 E, Tulsa County, Oklahoma, and more particularly described as follows:

Beginning at the Southwest corner of said NE¼; thence Easterly along the South line of said NE¼ a distance of 438.98 feet; thence N 11°23'21" W a distance of 157.91 feet; thence N 02°16'48" W a distance of 900.00 feet; thence N 02°29'01" E a distance of 301.04 feet; thence N 02°16'48" W a distance of 300.00 feet; thence N 11°45'22" E a distance of 309.23 feet; thence N 06°33'43" E a distance of 455.41 feet; thence N 34°06'16" E a distance of 181.91 feet; thence Easterly on a line parallel to the North line of said NE¼ a distance of 750.00 feet; thence N 0°55'31" W a distance of 30.00 feet; thence Easterly on a line parallel to the North line of said NE¼ a distance of 600.00 feet; thence N 0°55'31" W a distance of 50.00 feet to the North line of said NE¼; thence Westerly along said North line a distance of 2000.00 feet to the Northwest corner of said NE¼; thence Southerly along the West line of said NE¼ a distance of 2638.10 feet to the point of beginning.

The above described strip, tract or parcel of land contains 28.09 acres more or less of new right-of-way, the remaining area included in the above description being right-of-way occupied by the present roadway together with all abutters rights, including all rights to access from the remaining

EXHIBIT __A__

portion of defendant__ land onto the LIMITED ACCESS HIGHWAY to be constructed on the above described property, except that defendant__, ____ heirs, successors or assigns,

shall have the right of access to the Section Line Road, along the North side of the above described property, beginning at a point on the North line of the NE¼ a distance of 800.00 feet East of the Northwest corner of said NE¼ and extending East.

All bearings contained in this description are grid bearings derived from the USC&GS Oklahoma plane coordinate system and are not astronomical.

NOTE!! EXISTING FENCE IN THE TAKE AREA IS NOT TO BE CONSIDERED AS A VALUE FACTOR BECAUSE A NEW REPLACEMENT FENCE WILL BE INSTALLED BY THE STATE DURING CONSTRUCTION AT NO COST TO THE LANDOWNER.

Also: A temporary easement for the purpose of opening a stream channel on the following described tract:

A strip, tract or parcel of land lying in and being a part of the NE¼, Section 18, T 18 N, R 14 E, Tulsa County, Oklahoma, and more particularly described as follows:

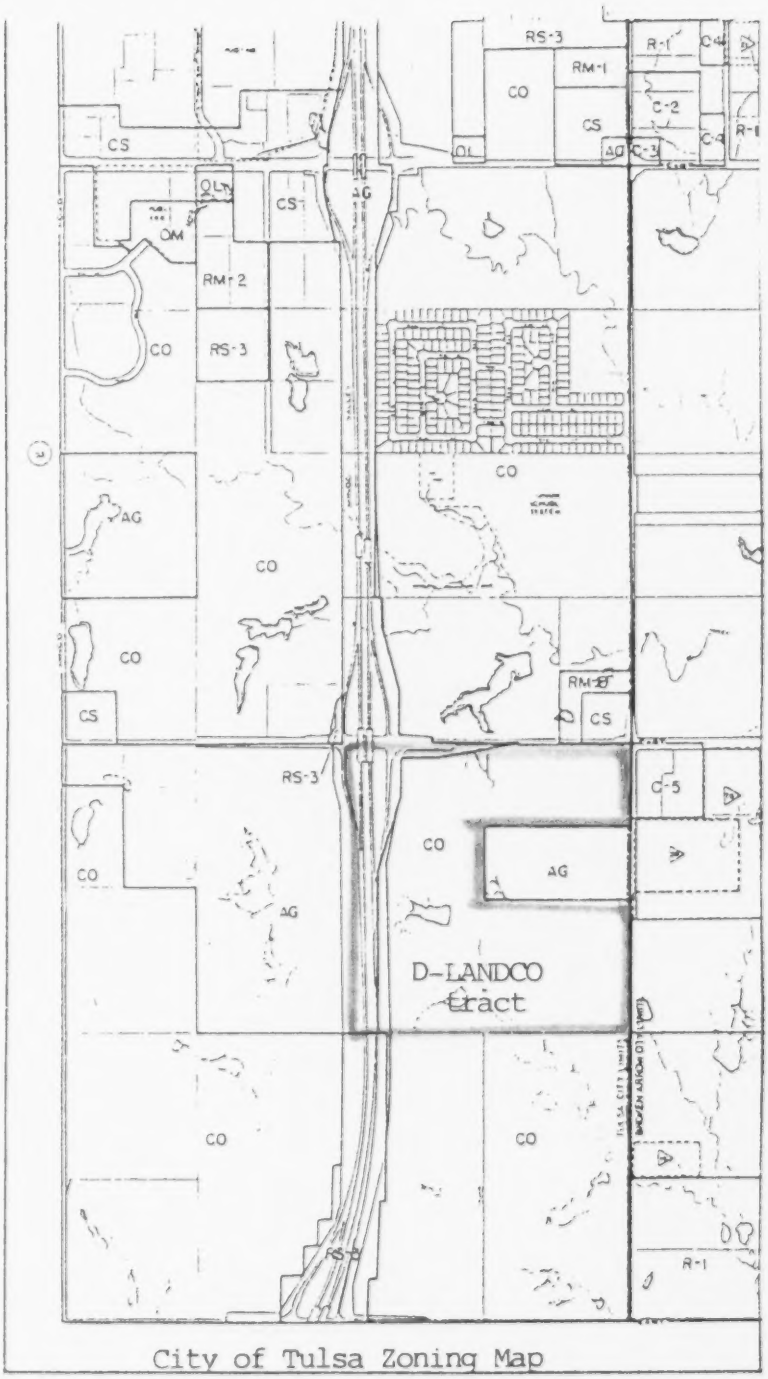
Beginning at a point on the permanent South right-of-way line of the Creek Turnpike a distance of 1139.79 feet West and 68.38 feet South of the Northeast corner of said NE¼; thence Westerly along said permanent South right-of-way line a distance of 100.00 feet; thence S 0°55'31" E a distance of 30.00 feet; thence S 89°04'29" W a distance of 200.00 feet; thence S 0°55'31" E a distance of 120.00 feet; thence Easterly

on a line parallel to and 200.00 feet South of the North line of said NE¼ a distance of 300.00 feet; thence N 0°55'31" W a distance of 150.00 feet to the point of beginning.

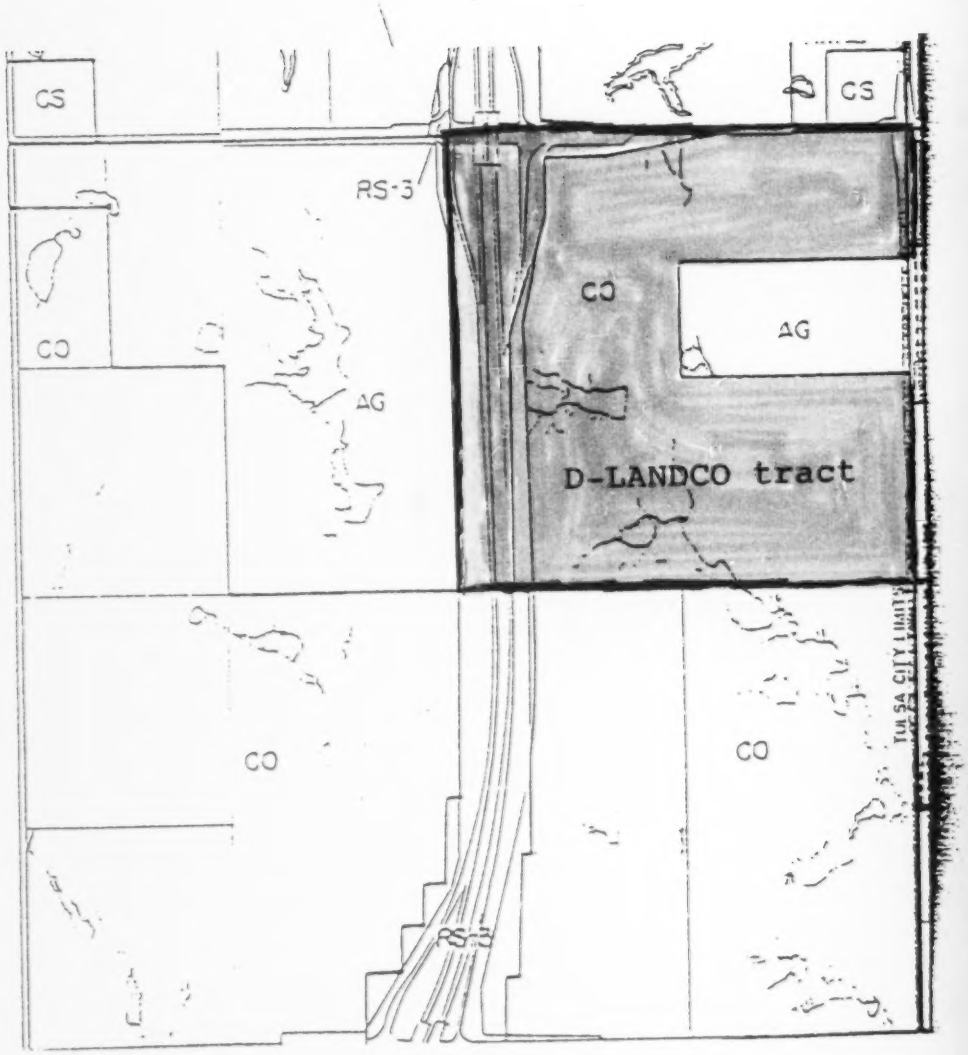
Containing 0.90 acres more or less.

All bearings contained in this description are grid bearings derived from the USC&GS Oklahoma plane coordinate system and are not astronomical.

This temporary easement will automatically expire at the completion of construction upon this highway project.



City of Tulsa Zoning Map



GREEN - Agricultural (AG)
PINK - Commercial (CO)